

**AGENDA  
NOVEMBER 17-18, 1995  
SCAC MEETING**

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## RULE 145 AFFIDAVIT OF INABILITY

In lieu of filing security for paying costs of an original action, a party who is unable to afford said costs shall file an affidavit as herein described. A "party who is unable to afford costs" is defined as a person who is presently receiving a governmental entitlement based on indigency or any other person who has no ability to pay costs. ~~The affidavit, and the party's action, shall be processed by the clerk in the manner prescribed by this rule.~~ Upon the filing of the affidavit, the clerk shall docket the action, issue citation and provide other customary services as are provided any party.

**2.1. Affidavit.** The affidavit shall contain complete information as to the party's identity, nature and amount of governmental entitlement, nature and amount of employment income, other income, (interest, dividends, etc.), spouse's income if available to the party, property owned (other than homestead), cash or checking account, dependents, debts and monthly expenses. The affidavit shall contain the following statements: "I am unable to pay the court costs. I verify that the statements made in this affidavit are true and correct." The affidavit shall be sworn before a ~~Notary Public~~ or other officer authorized to administer oaths. **3. Attorney's Certification.** If the party is represented by an attorney who is providing free legal services, without contingency, due to the party's indigency, ~~said the~~ attorney may file an affidavit statement to that effect to assist the court in understanding the financial condition of the party.

**2. IOLTA Certificate.** If the party is represented by an attorney who is providing free legal services, without contingency, due to the party's indigency and the attorney is providing services either directly or by referral from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) program, the attorney may file an IOLTA certificate. The certificate shall confirm that the party has been screened for income eligibility under the IOLTA income guidelines by the IOLTA-funded program or that the party has been referred to the attorney from an IOLTA-funded program and the program represents that it has screened the party for income eligibility under the IOLTA income guidelines. A party's affidavit of inability accompanied by an attorney's IOLTA certificate may not be contested.

**1. 3. Contest.** After service of citation, the defendant or the clerk may contest ~~the an~~ an affidavit that is not accompanied by an IOLTA certificate by filing a written contest giving notice to all parties, provided that temporary hearings will not be continued pending the filing of the contest. If the court shall find at the first regular hearing in the course of the action that the party (other than a party receiving a governmental entitlement) is able to afford costs, the party shall pay the costs of the action. Reasons for such a finding shall be contained in an order. Except with leave of court, no further steps in the action will be taken by a party who is found able to afford costs until payment is made. If the party's action results in a monetary award, and the court finds sufficient monetary award to reimburse costs, the party shall pay the costs of the action. ~~If the court finds that another party to the suit can pay the costs of the action, the other party shall pay the costs of the action.~~

**4. Attorney's fees and costs.** Nothing herein shall preclude any existing right to recover attorney's fees, expenses, or costs from any other party.

**REDLINE VERSION**  
**RULES 296-331**

**RULE 296. REQUESTS FOR FINDINGS OF FACT S  
AND CONCLUSIONS OF LAW**

~~In any case tried in the district or county court without a jury. A any party in a case in which an issue of fact was tried by the judge may request the court the judge to state in writing its findings of fact and conclusions of law. Trial of an issue of fact to a jury in the same case does not excuse the judge from making findings of fact on an issue tried by the judge. Such a request shall be entitled "Request for Finding of Fact and Conclusions of Law" and shall be filed within twenty days after judgment is signed with the clerk of the court, who shall immediately call such request to the attention of the judge who tried the case. The party making the request shall serve it on all other parties in accordance with Rule Texas Rule of Civil Procedure 21a. A request for findings of fact is not proper and has no effect with respect to an appeal of a summary judgment.~~

Source: Rule 296.

**RULE 297. ~~TIME TO FILE~~ FILING FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

~~(a) Time to File. The court judge shall file its findings of fact and conclusions of law within twenty days after a timely request is filed. The court judge shall cause a copy of its the findings and conclusions to be mailed to each party in the suit.~~

~~(b) Late Filing. If the court judge fails to file timely findings of fact and conclusions of law, the party making the request shall, within thirty days after filing the original request, file with the clerk and serve on all other parties in accordance with Rule 21a a "Notice of Past Due Findings of Fact and Conclusions of Law" which shall be immediately called to the attention of the court judge by the clerk. Such notice shall state the date the original request was filed and the date the findings and conclusions were due. Upon filing this notice, the time for the court judge to file findings of fact and conclusions of law is extended to forty days from the date the original request was filed. The judge's authority and duty to file findings and conclusions, whether original, additional or amended, are not affected by expiration of the court's plenary power over the judgment.~~

Source: Rule 297.

## **RULE 298. ADDITIONAL OR AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After the ~~court~~ judge files original findings of fact and conclusions of law, any party may file with the clerk of the court a request for specified additional or amended findings or conclusions. The request for these findings shall be made within ~~ten~~ twenty days after the filing of the original findings and conclusions by the ~~court~~ judge. Each request made pursuant to this rule shall be served on each party to the suit in accordance with ~~Rule 297(a)~~.  
Texas Rules of Civil Procedure 21a

The ~~court~~ judge shall file any additional or amended finding and conclusions that are appropriate within ten days after such request if filed, and cause a copy to be mailed to each party to the suit. No findings or conclusions shall be deemed or presumed by any failure of the ~~court~~ judge to make any additional findings or conclusions.

Source: Rule 298.

## **RULE 299. OMITTED FINDINGS**

When findings of fact are filed by the ~~trial court~~ judge they shall form the basis of the judgment upon all grounds of recovery and defense embraced therein. The judgment may not be supported upon appeal by a presumed finding upon any ground of recovery or defense, no element of which has been included in the findings of fact; but when one or more elements thereof have been found by the ~~trial court~~ judge, omitted unrequested elements, when supported by evidence, will be supplied by presumption in support of the judgment. Refusal of the ~~court~~ judge to make a finding requested shall be reviewable on appeal.

Source: Rule 299.

## **RULE 299a. FINDINGS OF FACT TO BE SEPARATELY FILED AND NOT RECITED IN A JUDGMENT**

Findings of fact shall not be recited in a judgment. If there is a conflict between findings of fact recited in a judgment in violation of this rule and findings of fact made pursuant to ~~Rules~~ Texas Rules of Civil Procedure 297 and 298, the latter findings will control for appellate purposes. Findings of fact shall be filed with the clerk of the court as a document or documents separate and apart from the judgment.

Source: Rule 299a.

## RULE 300. JUDGMENTS, DECREES AND ORDERS

(a) **Rendition, Signing And Entry.** A judgment is rendered when the judge orally announces it in open court or, if not so announced, when a judgment is signed by the judge. A judgment orally announced in open court shall be promptly reduced to writing and signed by the judge. A signed judgment shall be promptly filed with the clerk for entry in the minutes of the court. "Judgment" as used in these rules includes a decree or an order that disposes of a claim or defense.

Source: New rule; codification of existing law.

(b) **Form And Substance: General.** A judgment shall: (1) contain the names of the parties; (2) specify the relief to which each party is entitled; and (3) if appropriate, direct the issuance of processes and writs as may be necessary to enforce the judgment. The judgment of the court shall conform to the pleadings, the nature of the case proved and the jury's verdict or the judge's findings of fact or conclusions of law, unless a judgment is rendered as a matter of law.

Source: Rules 300, 301, 306, 308

(c) **Form and Substance: Specific.**

(1) **Personal Property.** Where the A judgment is for personal property, and it is shown by the pleadings, and evidence and the verdict if any, that such property has an especial value to the plaintiff, the court may award a special provide for a writ for the seizure and delivery of such property to the plaintiff and in such case may enforce its judgment by attachment, fine and imprisonment.

Source: Rule 308, after first clause of first sentence.

(2) **Foreclosure Proceedings.** A judgments for the foreclosure of a mortgages and or other liens shall be provide for: (i) recovery of that the plaintiff's his debt, damages and costs; (ii) with a foreclosure of the plaintiff's lien on the property subject thereto, and, to the lien; (iii) that an order of sale shall issue to any sheriff or any constable within the State of Texas, directing him to seize and sell the same, for to sale of the property as under execution, except in judgments against executors, administrators and guardians personal representatives, in satisfaction of the judgment; and (iv) that if the property cannot be found; or if the proceeds of such the sale be are insufficient to satisfy the judgment, then

